
CHAPTER 57 PROCESS AN AIRCRAFT LEASE AGREEMENT FOR REGULATORY COMPLIANCE UNDER FAR § 91.23 {91.54}

Section 1 Background

1. PTRS ACTIVITY CODE: 1440

3. OBJECTIVE. The objective of this task is to determine if an aircraft lease complies with FAR § 91.23 {91.54}, Truth in Leasing. Successful completion of this task results in a determination of whether the lease is in compliance or not with FAR § 91.23 {91.54}.

5. GENERAL.

A. Definitions.

(1) The *lessor* is the person furnishing the aircraft.

(2) The *lessee* is the person to whom the aircraft is furnished.

(3) For the purpose of FAR § 91.23 {91.54}, a *lease* means any agreement by a person to furnish an aircraft to another person for compensation or hire, whether with or without crewmembers, which is not a contract of conditional sale under Section 101 of the Federal Aviation Act of 1958 (FA Act).

(4) *Conditional Sale* is defined in the FA Act as --

(a) “. . . any contract for the sale of an aircraft . . . under which possession is delivered to the buyer and the property is to vest in the buyer at a subsequent time, upon the payment of part or all of the price, or upon the performance of any other condition or the happening of any con

(b) “any contract for the bailment or leasing of an aircraft . . . by which the bailee or lessee contracts to pay as compensation a sum substantially equivalent to the value thereof, and by which it is agreed that the bailee or lessee is bound to become, or has the option of becoming, the owner thereof upon full compliance with the terms of the contract. The buyer, bailee, or lessee shall be deemed to be the person by whom any such contract is made or given.”

(5) *Conveyance* is defined in the FA Act as “a bill of sale, contract of conditional sale, mortgage, assignment of mortgage, or other instrument affecting title to, or interest in, property.”

(6) *Operation of Aircraft or Operate Aircraft* is defined in the FA Act as “. . . the use of aircraft, for the purpose of air navigation and includes the navigation of the aircraft. Any person who causes or authorizes the operation of aircraft, whether with or without the right of legal control (in the capacity of owner, lessee, or otherwise) of the aircraft, shall be deemed to be engaged in the operation of the aircraft within the meaning of this Act.”

(7) *Operational Control* is defined in the FAR as “with respect to a flight, . . . the exercise of authority over initiating, conducting, or terminating a flight.”

(8) In a *wet lease* the lessor normally exercises operational control. There may be situations during which the lessor provides the aircraft and flight crew (pilots and flight engineer) but the lessee provides the cabin crew (flight attendants.) In this case, the lease would be a wet lease.

B. Regulatory Authority. FAR § 91.23 {91.54} establishes truth in leasing requirements in leases and conditional sales contracts of large civil aircraft of U.S. registry.

(1) Illegal and unsafe operations may occur when leases or contracts do not specify who is legally responsible for operational control of the aircraft. In some cases, the lessee may be aware of his or her responsibility for operational control of the aircraft but does not recognize responsibility for compliance with the FAR.

(2) Some owners of large airplanes may attempt to evade complying with the certification and operating requirements of FAR Parts 121, 125, or 135 by using devious leases or conditional sales contracts. Usually this attempt appears as though the lessee or conditional buyer has operational control of the aircraft, when, in fact, he or she does not. This assumption of responsibility creates a safety problem and can involve legal liability.

(3) To engage legitimately in “charter” service for compensation or hire, a company must be certificated as an air carrier or commercial operator. The inspector's primary concern in processing or evaluating an aircraft lease or contract is determining evidence of operational control and that common carriage is not involved. Evasively

worded lease agreements should be questioned and brought to the attention of the regional counsel.

(4) The regulation requires that the lease identify the maintenance program the aircraft has been under for the preceding 12 months and the person or parties considered responsible for operational control of the aircraft. A copy of the agreement is required to be carried in the aircraft during all operations conducted under the terms of the lease or contract.

7. NOTIFICATION. Unless otherwise authorized, the operator is required to give the district office nearest the airport where the lease or contract flight will originate 48-hour advance notification of the flight.

A. Method. Notification is usually either by telephone or in person.

B. Deviation. To provide some relief in cases where the 48-hour notification requirement would create a hardship, the office manager may allow receipt of notification in less time. Factors to be considered in doing so are:

- (1) Inspector availability
- (2) Location of departure airport
- (3) Results of prior surveillance of the proposed operator

C. Required Information. Under FAR § 91.23 {91.54} the following information must be provided to the district office:

- (1) Location of the airport
- (2) Departure time
- (3) Registration number of aircraft involved

D. Planning Information. The district office needs the following information for planning purposes:

- (1) Who is going to fly the aircraft (crew names if known)
- (2) Where the aircraft is presently located
- (3) Aircraft destination and enroute stops, if any
- (4) Nature of mission (cargo, passenger, or both)
- (5) Where and when can the aircraft be seen before departure

(6) Type of aircraft

(7) Who is the lessee

(8) Who is the lessor

(9) Name of the person or parties considered to be responsible for operational control of the aircraft

(10) Type of inspection and maintenance program the aircraft has been under during the preceding 12 months

(11) Status of compliance with applicable maintenance and inspection requirements

9. FACTORS TO BE CONSIDERED AFTER RECEIPT OF A LEASE NOTIFICATION. The inspector, in coordination with the office manager, is in the best position to decide if a ramp inspection is necessary. Not all lease notifications require an inspection. The following suggestions may assist in evaluating a lease notification to determine if an inspection is necessary.

A. Personal Knowledge of the Lessee or Lessor. No purpose would be served in conducting a ramp inspection of an aircraft leased from an owner that the district office knows to have a good compliance and safety record.

B. Personnel Qualifications. Effective ramp inspections can be conducted without the inspector being personally qualified in or familiar with the aircraft involved. However, if there is reason to suspect either the condition of the aircraft or the qualifications of the flight crew, personnel should be assigned who have the expertise to conduct the appropriate inspection. At times, it might be necessary to request outside assistance from the appropriate regional office.

C. Type of Mission. It may be appropriate to give greater consideration toward conducting a ramp inspection of an aircraft involved in passenger carrying operations than one limited to cargo only.

D. Type of Inspection and Maintenance Program. A determination should be made as to the type of inspection and maintenance program the aircraft has been under during the preceding 12 months. If the aircraft is currently maintained under a known program such as a continuous airworthiness inspection program of a FAR Part 121 operation or an approved aircraft inspection program of a FAR Part 135 operator, there may be little need for an airworthiness inspection. If the aircraft has been operated as a public aircraft immediately preceding

the current lease agreement, consideration should be given to an inspection to determine if the airworthiness certificate is still valid.

E. Conduct of Ramp Inspections. If a ramp inspection is to be conducted, the inspector should also follow the procedures in Related Task #56, Conduct a FAR Part 91 Ramp Inspection.

11. ALLOWABLE COMPENSATION. The lessor may charge for the aircraft and services as provided in FAR Part 91, Subpart D. The lessor does not need to be certificated under FAR Parts 121, 125, or 135.

13. FAR PART 91, SUBPART D. FAR § 91.501 {91.181} prescribes those operations of large and turbine-powered U.S. civil airplanes and allows certain compensation and charges without requiring certification under FAR Parts 121, 125, or 135. Additionally, certain small aircraft (less than 12,500 pounds) may be operated under FAR Part 91, Sub- part D through an exemption issued to the National Business Aircraft Association (NBAA.)

A. Corporate Aircraft. In general, the use of corporate aircraft is non-commercial in nature and a corporation may make charges to subsidiaries, affiliates, or divisions for the use of the aircraft incidental to and within the scope of its business. The key element here is that the aircraft operator does not engage in common carriage, i.e., "holding out" to the public.

B. Types of Agreements. There are three types of agreements in which certain compensatory charges may be allowed.

(1) A *time sharing agreement* means an arrangement whereby a person leases an airplane with flight crew to another person. No charge is made for the flight conducted under that arrangement other than for the items listed in FAR § 91.501(d) {91.181(d)}. Absent from the list are pilot salaries, a pro rata share of the overhead, hangar and maintenance expenses, and interest or amortization costs for the airplane. FAA feels that permitting the additional 100% of the fuel costs approximates the other overhead costs while limiting the financial return below a profit level.

(a) Time sharing is essentially a wet lease of the aircraft and an agreement or lease is required by regulations. Operational control and the relationship of the parties using the aircraft are the keys to how agreements may be handled. Operational control is deemed to rest with the pilot-in-command and, by extension, to the employer of the pilot. In

a wet lease where the pilot is furnished by the owner of the aircraft, that pilot is deemed in operational control.

(b) FAA requires that a copy of any operating agreement or lease covering operations under time sharing (and also interchange) be mailed to the FAA Airmen and Aircraft Registry Division, P.O. Box 25724, Oklahoma City, OK 73125, within 24 hours of its execution. In addition, a copy of the lease, contract, or agreement should be carried in the aircraft when the aircraft is being operated under the terms of the lease or agreement (FAR § 91.23 {91.54}.) This does not imply the need for FAA approval either before or ultimately for the terms of the contract. Filing is for record purposes only.

(2) An *interchange agreement* means an arrangement whereby a person leases an airplane to another person in exchange for equal time, when needed, on the other persons airplane or for a monetary payment that does not exceed the difference between the cost of owning, operating, and maintaining the exchanged airplanes.

(a) Interchange covers the case where a company that operates an airplane wishes to borrow another company's airplane for a trip. The agreement can provide for the mutual exchange of airplanes and crews with provisions to equalize the expenses with an appropriate payment. For instance, a company using a business jet can interchange use of the aircraft with a company using a turboprop airplane. Total costs per hour of use would be different and payment is allowed to compensate for the cost differential.

(b) The provisions for recording an interchange agreement are the same as for time sharing.

(3) A *joint ownership agreement* means an arrangement whereby one of the registered owners of an airplane employs and furnishes the flight crew for that airplane and each of the other registered owners pays a share of the charges specified in the agreement between the owners.

(a) Under joint ownership, an agreement may be reached as to the percentage of ownership and location of operational control. Two companies can agree to purchase the airplane and share it 60% and 40%, with the pilot, maintenance, etc., being the responsibility of one company. That company is deemed to exercise operational control by FAA. All costs for owning, operating, and maintaining the aircraft can be divided according to the agreement.

(b) The joint owners must file joint ownership records with the FAA Record Center, Oklahoma City, OK, and secure the appropriate registration for the airplane. Failure to file the appropriate title and bill of sale showing joint ownership can be considered a violation of the rule.

15. SECURITY OF LEASES/AGREEMENTS. The lease or agreement furnished by an operator may contain sensitive commercial or financial information. It is, therefore, privileged and confidential and will not be made available to the public or copied by the inspector.

Section 2 Procedures

1. PREREQUISITES AND COORDINATION REQUIREMENTS.

A. Prerequisites. This task requires knowledge of the regulatory requirements of FAR Part 91 and FAA policies and qualification as an Aviation Safety Inspector (Operations).

B. Coordination. This task may require coordination with the Regional Counsel, with the Airmen Certification Branch (AVN-460), and Aircraft Registration Branch (AVN-450).

3. REFERENCES, FORMS, AND JOB AIDS.

A. References.

- FAR Parts 1, 61, 63, 67, 121, 125, and 135
- FAR § 91.501 {91.181}, Applicability (FAR Part 91, Subpart D)
- Advisory Circular 91-37, Truth in Leasing
- Order 8700.1, General Aviation Operations Inspector's Handbook
- Order 8720.1, Truth in Leasing Notification (FAR § 91.23 {91.54})
- PTRS Field Office Manual

B. Forms.

- FAA Form 8000-36, PTRS Transmittal Form

C. Job Aids.

- Sample letters and figures

5. PROCEDURES.

A. Request Lease. After being notified that a lease has been agreed upon, request a copy of the lease. Inform the lessee that he or she can either mail the copy or bring it in personally to the district office.

B. PTRS. Open PTRS file.

C. Review Lease. Review the lease (Figure 57-1) to determine compliance with FAR § 91.23 {91.54}, Truth in Leasing. Check for --

- (1) Aircraft Maintenance Program

(2) Operational control of aircraft

(3) Name and Address of Operator

(4) Not contrary to FAR Part 121, 125, or 135 applicability

(5) Signature certifying acknowledgment of responsibilities

D. Lease Not in Compliance. Return the lease to the operator. Inform the operator in writing (Figure 57-2) of the corrections needed for compliance.

E. Lease in Compliance. If the lease is in compliance with FAR § 91.23 {91.54}, inform the district office manager that the lease is in compliance. Determine whether a ramp inspection is necessary, taking into account the following:

(1) Whether the aircraft owner (the lessor) has a good compliance and safety record known to the office manager

(2) Availability of qualified inspectors to conduct the inspection

(3) Type of operation to be conducted (passenger carrying or cargo carrying)

(4) Type of inspection and maintenance program the aircraft has been under during the preceding 12 months

F. Conduct Ramp Inspection. If a ramp inspection is necessary, see Related Task #56, Conduct a FAR Part 91 Ramp Inspection.

G. Questions Concerning Compliance. If there are still questions regarding either the lease format or who has specific operational control of the aircraft, contact the Regional Counsel for guidance and proceed with the counsel's instructions.

H. Forward Report. If the aircraft is not based in the inspector's district, forward a copy of the PTRS report to the appropriate district office.

I. File Lease Agreement. File the lease agreement (and the Job Aid, if applicable) according to office procedures.

J. PTRS Report. Complete FAA Form 8000-36.

7. TASK OUTCOMES. Successful completion of this task results in either:

- A. An approved lease
- B. A disapproved lease

9. FUTURE ACTIVITIES.

- A. Process additional leases from operator.
- B. Future ramp inspections involving the lessee.
- C. Possible enforcement investigation

FIGURE 57-1 SAMPLE LEASE

_____(insert type, model and registration number of airplane, such as Convair 240; N124W) HAS BEEN MAINTAINED AND INSPECTED UNDER _____ (insert FAR 91 or FAR 121 as appropriate) FROM TO _____ (insert date of execution of lease or contract after the word "to"; then go back 12 months and under FAR 121 during other parts of the 12 months, the dates and the FAR under which it was maintained for each period should be specified.)

IT WILL BE MAINTAINED AND INSPECTED UNDER _____ (insert FAR Part 91 or FAR Part 121 as appropriate) FOR OPERATIONS TO BE CONDUCTED UNDER THIS _____ (insert lease OR contract of conditional sale, whichever is correct).

_____(insert name and address of individual, company, or corporation) IS CONSIDERED RESPONSIBLE FOR OPERATIONAL CONTROL OF ALL AIRCRAFT IDENTIFIED AND TO BE OPERATED UNDER THIS _____ (insert lease or contract of conditional sale).

AN EXPLANATION OF THE FACTORS BEARING ON OPERATIONAL CONTROL AND THE PERTINENT FEDERAL AVIATION REGULATIONS CAN BE OBTAINED FROM THE NEAREST FAA FLIGHT STANDARDS DISTRICT OFFICE.

I, THE UNDERSIGNED _____ (insert name and address of responsible party) CERTIFY THAT I AM RESPONSIBLE FOR OPERATIONAL CONTROL OF THE AIRCRAFT AND THAT I UNDERSTAND MY RESPONSIBILITIES FOR COMPLIANCE WITH APPLICABLE FEDERAL AVIATION REGULATIONS.

Signature and Title (lessor) Date and time of execution

Signature and Title (lessee) Date and time of execution

**FIGURE 57-2 SAMPLE LETTER INFORMING OPERATOR
OF NEEDED CORRECTIONS IN LEASE**

FAA LETTERHEAD

DATE

APPLICANT'S NAME AND ADDRESS

Dear ____:

We have reviewed the lease which you submitted for [identify aircraft by make, model, and N-number]. We are unable to approve the lease until corrections are made to the following clauses to bring them into compliance with FAR § 91.23:

List all unsatisfactory clauses and their appropriate FAR references.

If you require assistance in adjusting the above clauses, please contact this office at [include the telephone number and operating hours of the district office].

Sincerely,

Signed by the reviewing inspector